REMARKS

Summary of the Office Action

In the Office Action dated September 8, 2004, claims 2-8 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,130,418 to Van Rosmalen et al. (hereinafter "Van Rosmalen") in view of U.S. Patent No. 4,402,607 to McVay et al. (hereinafter "McVay").

Summary of the Response to the Office Action

Applicants amend claim 3 as provided herein. Accordingly, claims 2-8 remain pending in this application.

The Rejection under 35 U.S.C. § 103(a)

Claims 2-8 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Van Rosmalen in view of McVay. Applicants amend claim 3 as provided herein to differently describe the subject matter of the claimed invention. Applicants respectfully submit that amended independent claim 3 is patentable over Van Rosmalen in view of McVay.

Independent claim 3, as amended, recites an optical head apparatus on an optical path of a light beam between an objective lens and an information recording medium including amongst other features:

> a predetermined time of a delay detection signal necessary for the movement unit to move to a predetermined height is set to a shorter time than a time in which the foreign material reaches the position of the movement unit after the detector detects the foreign material.

Applicants respectfully submit that this amendment introduces no new matter as it is supported by the recitation at least at page 19, paragraph [0044], of the as-filed specification. Applicants respectively submit that neither Van Rosmalen nor McVay, whether taken singly or in combination, teach or suggest the optical head apparatus of the instant invention with at least the features of claim 3 recited above.

In view of the foregoing, Applicants respectfully submit that Van Rosmalen and McVay combined do not teach or suggest each feature of independent claim 3, as amended. As pointed out in MPEP § 2143.03, "[to] establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." Thus, Applicants respectfully submit that independent claim 3 is in condition for allowance as being patentable over Van Rosmalen in view of McVay. Moreover, Applicants respectively submit that claims 2 and 4-8 should be allowed for at least the same reasons as discussed above with regard to independent claim 3 upon which they depend. Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 2-8 under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing remarks, Applicants respectfully request the entry of this Amendment to place the application in clear condition for allowance or, in the alternative, in better form for appeal. Applicants also request the Examiner's reconsideration of the application and the timely allowance of the pending claims.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite the prosecution.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

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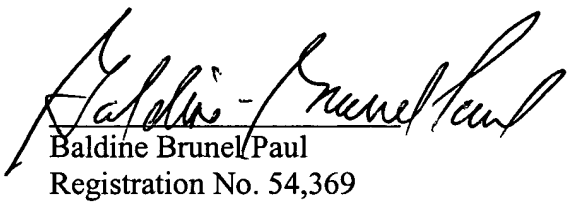
By: 
Baldine Brunel Paul
Registration No. 54,369

Customer No. 009629
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 739-3000
Facsimile: (202) 739-3001